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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,409	09/10/2003	Steven P. Hergott	P06668US0-169F	4641
34082	7590	07/13/2004		
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			EXAMINER PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/659,409	HERGOTT ET AL.	
	Examiner	Art Unit	
	David J Parsley	3643	NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6-8-04</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 6-8-04 and this action is non-final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of the textured continuous belt being "...parallel only to the top surface of the stuffing tube..." is not supported by applicant's disclosure. As seen in applicant's figure 2, the belt assembly – at 24, is parallel to both the top and bottom surfaces of the stuffing tube – at 14.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,577,370 to Kollross.

Referring to claims 1-2 and 5-6, Kollross discloses a method and apparatus comprising, a hollow meat stuffing tube – at 18 and/or 104 and/or 14 and/or 138, on the machine having a first end and a discharge end for extruding emulsion into a natural casing on an outer surface of the stuffing tube, and a textured belt assembly – at 44, 56, 58 or 100,102, mounted adjacent and parallel only to the top surface of the stuffing tube – see for example only the top belt – 44,56,58 or 100,102 in figures 4-8, near the discharge end having a continuous belt – at 44 or 102, with a plurality of grooves – at 56,58 or 132,134, that loops around a pair of rollers – see figures 4a-4e and 7-8, wherein the textured belt assembly longitudinally moves the casing about the stuffing tube and towards the discharge end and into the twisting mechanism – proximate 66-68 or 140,142, where it is inherent that the clip at 66 or 142 is twisted about the casing – see for example figures 1-8. Further, see U.S. Patent No. 6,146,261 to Bienert et al., which shows the clipping mechanism – at 22-26 in more detail as a twisting mechanism to twist the clips – at 24 and 26 around the casing.

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Referring to claim 4, Kollross discloses one of the rollers is mounted on a fixed axis – at 50, such that the textured belt – at 44 is free to pivot about fixed axle – see figures 4a-4e where the belt pivots about the roller – at 46 and axle – at 50.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kollross as applied to claim 2 above, and further in view of U.S. Patent No. 5,085,036 to Evans. Kollross does not disclose both axles are fixed. Evans does disclose both axles are fixed – see for example figure 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kollross and add the axles being fixed of Evans, so as to allow for the device to be securely held in place during use.

Response to Arguments

5. Regarding claim 1, the Kollross reference US 4577370 does disclose a twisting mechanism – proximate 66,68 or 140,142. Kollross discloses a clipping device which attaches clips to the casing to close off each end of the casing and it is known to those of ordinary skill in

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the art that the clipping devices use a U-shaped thin metal clip which is bent/twisted about the ends of the meat casing with the clips being placed in a spiral configuration about the ends of the casing and thus since the clips are twisted and are attached directly to the casing the casing is also twisted during the clipping process and therefore the clipping device of Kollross is a twisting mechanism. Further, see U.S. Patent No. 6,146,261 to Bienert et al., which shows a clipping mechanism in more detail. Further, applicant does not specifically what a "twisting mechanism" is in relation to the claimed invention and therefore it is the examiner's position that any device that causes a twisting mechanism teaches applicant's claimed invention.

Regarding the 35 U.S.C. 103 (a) rejection, applicant cites case law but does not apply it to the references used in combination to reject claim 3. All of the claimed limitations are disclosed by the prior art references as seen above in paragraphs 3-4 of this office action.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

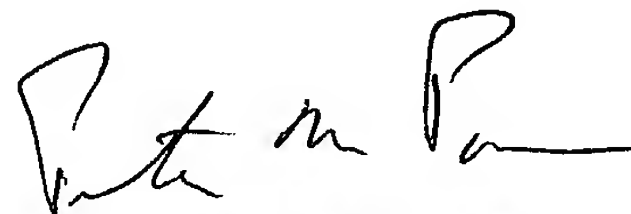
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

2/9/04